Petroliam Nasional Bhd v Nik Ramli Nik Hassan

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02–01 OF 2001(W)
STEVE SHIM CJ (SABAH AND SARAWAK), MOHTAR ABDULLAH FCJ, MOKHTAR SIDIN JCA
10 OCTOBER 2003

Administrative Law — Remedies — Certiorari and mandamus — Whether review jurisdiction of review court included right of review court to decide for itself correctness of decision on merits — Rules of High Court 1980 O 53

Labour Law — Industrial Court — Dismissal — Constructive dismissal — Industrial Court dismissed respondent's claim for unfair dismissal — Whether substantial flaws in reasoning or conclusions by Industrial Court — Whether findings of Industrial Court illegal or plainly irrational — Whether reviewing judge should disturb finding of Industrial Court

The Minister of Human Resources had referred the dispute between the respondent and the appellant to the Industrial Court under s 20(3) of the Industrial Relations Act 1967. The Industrial Court dismissed the respondent's claim for unfair dismissal. Dissatisfied, the respondent moved the High Court for orders of certiorari and mandamus. The High Court held that the Industrial Court had committed an error of law in arriving at its conclusion and accordingly granted the orders prayed for. Against this decision, the appellant appealed to the Court of Appeal. The Court of Appeal dismissed the appellant's appeal and held that a reasonable tribunal properly directing itself on the facts and law would have reached a conclusion that the respondent had been dismissed without just cause or excuse. The appellant was granted leave to appeal to the Federal Court on the following question: 'Whether the review jurisdiction of the review court under O 53 of the Rules of High Court 1980, included a right of the review court to decide for itself the correctness of the decision on the merits'.

Held, answering the question in the affirmative and allowing the appellant's appeal:

(1) The views expressed by the majority in *R Rama Chandran v The Industrial Court of* Malaysia that, in judicial review proceedings, the courts had the powers to: (a) review the decision of a tribunal on the merits; (b) substitute a different decision in place of the tribunal's decision without remitting it to the tribunal for re-adjudication; and (c) order consequential relief were not the product of 'judicial excessivism'. On the contrary, they reflected the kind of controlled judicial activism that was needed in order to meet, in a supervisory context, the ever-widening powers conferred upon statutory tribunals or other bodies which had proliferated in modern times (see paras 9, 12); *R Rama Chandran v The Industrial Court of Malaysia* [1997] 1 MLJ 145 followed.

(2) Not every case was amenable to the *Rama Chandran* approach. It depended on the factual matrix and/or the legal modalities of the case. This was a matter of judicial discretion on the part of the reviewing judge (see para 14).

(3) In the instant case, there were no substantial flaws in the reasoning or the conclusions by the Industrial Court. The award contained a sound analysis of the law as to what constituted constructive dismissal by an employer. The Industrial Court had conducted a detailed review of all facts and evidence, both oral and documentary and had drawn inferences from the conduct of the respondent and the relevant officers of the appellant before concluding that the appellant was not guilty of any breach which went to the root of the service contract. The Industrial Court further held that there was no breach which could justify the respondent's resignation. The Industrial Court had also found the respondent to be impatient. A reviewing judge should not disturb such finding unless it could be shown to be based on grounds of illegality or plainly irrational. Here, there was no illegality in the finding of the Industrial Court, nor can it be said to be plainly irrational in all the circumstances. In government service or in a very large organization such as the appellant, having a PhD, like the respondent, did not necessarily guarantee a promotion. There were numerous imponderables involved. A long wait for promotion was not an uncommon feature in government service or statutory bodies (see para 17–20).

[**Bahasa Malaysia summary**

Menteri Sumber Manusia telah merujuk kepada pertikaian antara responden dan perayu kepada Mahkamah Perusahaan di bawah s 20(3) Akta Perhubungan Perusahaan 1967. Mahkamah Perusahaan telah menolak tuntutan responden kerana pemecatan tidak adil. Berasa tidak puas hati, responden telah memohon kepada Mahkamah Tinggi untuk perintah-perintah certiorari dan mandamus. Mahkamah Tinggi telah memutuskan bahawa Mahkamah Perusahaan telah melakukan satu kesilapan dari segi undang-undang semasa membuat kesimpulan dan sewajarnya telah memberikan perintah-perintah yang dipohon. Terhadap keputusan ini, perayu telah merayu kepada Mahkamah Rayuan. Mahkamah Rayun telah menolak rayuan perayu dan memutuskan bahawa satu tribunal yang secara munasabah yang dengan betul telah mengendalikan berdasarkan fakta dan undnag-undang akan tiba kepada satu kesimpulan bahawa responden telah dipecat tanpa sebab atau alasan yang adil. Perayu telah dibenarkan membuat rayuan kepada Mahkamah Persekutuan berdasarkan persoalan berikut: 'Whether the review jurisdiction of the review court under O 53 of the Rules of High Court 1980, included a right of the review court to decide for itself the correctness of the decision on the merits'.

Diputuskan, menjawab persoalan secara positif dan membenarkan rayuan perayu:

(1) Pendapat-pendapat yang dinyatakan secara majoriti dalam *R Rama Chandran v The Industrial Court of* Malaysia bahawa, dalam prosiding kajian semula kehakiman, mahkamah mempunyai kuasa untuk: (a) mengkaji semula keputusan tribunal atas merit; (b) menggantikan keputusan lain dengan keputusan tribunal tanpa meremitkannya kepada tribunal tersebut untuk penghakiman semula; dan (c) memerintahkan relif sampingan

yang bukan akibat 'judicial excessivism'. Sebaliknya, ia menggambarkan jenis aktivis kehakiman terkawal yang diperlukan bagi tujuan mencapai, dalam konteks pengawalan, kuasa-kuasa luas yang diberikan kepada tribunal statutori atau badan-badan lain yang wujud dengan pesat pada zaman moden (lihat perenggan-perenggan 9, 12); *R Rama Chandran v The Industrial Court of Malaysia* [1997] 1 MLJ 145 diikut.

(2) Bukan semua kes menerima pendekatan *Rama Chandran*. Ia bergantung kepada matriks faktual dan/atau modus undang-undang kes. Ini suatu perkara berkaitan budi bicara kehakiman di pihak hakim yang mengkaji semula (lihat perenggan 14).

(3) Dalam kes semasa, tiada kelemahan substantial dalam alasan atau kesimpulan Mahkamah Perusahaan. Award tersebut mengandungi analisa yang kukuh berhubung apa yang membentuk pemecatan konstruktif oleh seorang majikan. Mahkamah Perusahaan telah mengendalikan satu kajian semula terperinci tentang semua fakta dan keterangan, secara lisan dan dokumentar dan telah tiba kepada satu inferens berdasarkan perlakuan responden dan pegawai-pegawai perayu yang berkaitan sebelum memutuskan bahawa perayu tidak bersalah untuk apa-apa perlanggaran yang menjejaskan kontrak perkhidmatan. Mahkamah Perusahaan seterusnya memutuskan bahawa tiada perlanggaran yang boleh menjustifikasikan pemberhentian kerja responden. Mahkamah Perusahaan juga mendapati bahawa responden seorang yang tidak penyabar. Seorang hakim yang mengkaji semula tidak sepatutnya mengganggu penemuan tersebut kecuali jika ia boleh menunjukkan bahawa ia berasaskan alasan-alasan yang menyalahi undang-undang atau dengan jelas tidak rasional. Di sini, tidak apa-apa yang menyalahi undang-undang dalam penemuan Mahkamah Perusahaan, mahupun boleh dikatakan ia nyata tidak rasional dalam apa jua keadaan. Dalam perkhidmatan kerajaan atau dalam satu organisasi yang besar seperti perayu, mempunyai PhD, seperti responden, tidak semestinya menjamin kenaikan pangkat. Terdapat pelbagai keputusan yang tidak boleh diduga. Satu penantian yang lama untuk kenaikan pangkat bukan satu ciri yang tidak biasa berlaku dalam perkhidmatan kerajaan atau badan berkanun (lihat perenggan-perenggan 17–20).]

Notes

For cases on certiorari and mandamus, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 394–417.
For cases on dismissal, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1308–1312.
For certiorari and mandamus, see 9 *Halsbury's Laws of Malaysia* paras [16.117]–[160.146].
For dismissal, see 7 *Halsbury's Laws of Malaysia* (2003 Reissue) para [120.093].

Cases referred to

Amanah Butler (M) Sdn Bhd v Yike Chee Wah [1997] 1 MLJ 750 (refd)
Datuk Bandar Kuala Lumpur v Zain Azahari bin Zainal Abidin [1997] 2 MLJ 17 (refd)

Kumpulan Perangsang Selangor Bhd v Zaid bin Haji Mohd Noh [1997] 1 MLJ 789 (refd)
R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145 (folld)
Swedish Motor Assemblies Sdn Bhd v Haji Mohd Ison bin Baba [1998] 2 MLJ 372 (refd)
Western Excavating (ECC) Ltd v Sharp [1978] 2 WLR 344 (refd)
Wong Chee Hong v Cathay Organisation (M) Sdn Bhd [1988] 1 MLJ 92 (refd)

Legislation referred to

Courts of Judicature Act 1964 s 78
Industrial Relations Act 1967 ss 20(1), (3), 30(4), (5), 33B
Rules of the High Court 1980 O 53

Steve Shim CJ (Sabah and Sarawak) (delivering judgment of the court):

[1] Before I proceed to read the judgment, let me say that on 7 August 2002, the late Mohtar Abdullah FCJ was due to deliver the judgment on this case but unfortunately, the day before, he was suddenly struck down with a stroke. It was then found necessary to await his recovery so that he could proceed to deliver the judgment. Sadly, he passed away. Hence the delay in the delivery of this judgment. It is therefore done pursuant to s 78 of the Courts of Judicature Act 1964.

[2] On 3 January 2000, the appellant was granted leave to appeal to the Federal Court on the following question:

> Whether the review jurisdiction of the review court under Order 53 of the Rules of High Court, 1980, includes a right of the review court to decide for itself the correctness of the decision on the merits.

[3] The factual background can be briefly stated. The respondent obtained his masters degree in geology in 1977. He commenced work with the appellant on 16 December 1977 as a Trainee Geologist. He was later confirmed as a Geologist on 16 December 1978. Between 1979 and 1983 he served in various positions, finally as Section Head of Geological Projects which was a grade 5 post. In 1983, he was offered a scholarship to do his PhD at Oxford University, United Kingdom. Upon completion of this course in September 1986, the respondent returned to Malaysia and resumed work with the appellant and was emplaced in the Laboratory Services Department. On reporting to the Manager of Laboratory Services Department, the respondent claimed that he was not given any position or job description. As he was unhappy with this state of affairs, he made inquiries with his superior officers. By a letter dated 23 September 1986, the Manager of Laboratory Services Department Dr Ramlee Karim conveyed to him the following information:

1 With the present set-up of the Laboratory Services Department there is no position which suits your academic qualifications and working experience.
2 With the formation of PRI there could possibly be a suitable slot for you.
3 In the interim period before the establishment of the PRI you are to report direct to the Laboratory Services Department manager with a function of assisting him to set up the upstream aspect of PRI and to generally assist in upstream matters.

[4] PRI refers to the Petronas Research Institute. After the formation of PRI in mid-1987, the respondent was informed by the General Manager, Human Resources Division that his position in PRI was to be a Geologist. The respondent considered this to be a demotion in rank as it was the same position he held in 1978 from which position he had on severar occasions been promoted. So on 30 November 1988 he wrote a letter of complaint to the Director of PRI seeking a transfer to another appropriate job taking into consideration his qualifications and experience with a copy to the Vice-President, Human Resources and Manpower Division. There was no response from them. On 12 December 1988, the respondent sent a reminder to the director of PRI, again copied to the Vice-President. The reminder was short and terse:

> Request for Transfer
>
> Dr Nik Ramli Nik Hassan
>
> With reference to my memo dated 30 November 1988 on the above, I would appreciate if action on the memo could be carried out on or before 16 December 1988 following which I may have to consider other options.

[5] This reminder sounded more like an ultimatum. Possibly because of this, it fell on deaf ears. The respondent was however persistent. On 20 December 1988, he wrote a final letter to the same director copied to the same Vice-President in the following terms:

> I refer to my letter of 12th December 1988 on the question of employment with the Company to which I have yet to get a reply. I have been patient for almost two years while I was under 'cold storage'.
>
> It has now become clear to me that the Company has evinced an intention not to be bound by the terms of my employment contract and the scholarship agreement dated 8th October 1983.
>
> Under the circumstances, I have no alternative but to consider myself dismissed with effect from 20th December 1988.

[6] Thereafter, the respondent did not turn up for work. On 23 December 1988, he received a letter from the General Manager, Human Resources Division asking him to report back for duty. The respondent did not do so as he considered himself dismissed. He then lodged a complaint with the Director General of Industrial Relations under s 20(1) of the Industrial Relations Act 1967 ('the Act'). Subsequently, the Minister of Human Resources referred the dispute to the Industrial Court under s 20(3) of the Act. The main focus of the respondent's complaint in the Industrial Court was 'constructive dismissal'. He felt he had been demoted as the appellant had kept him (to use his words) 'in cold storage' since his return from Oxford University. He further contended that up to December 1988, he was put in (again in his words) 'a nothing to do position'. After a lengthy hearing, the Industrial Court dismissed the respondent's claim for unfair dismissal. It is sufficient to refer to that part of the award which reads:

> Having heard the oral evidence and seen the documentary exhibits produced by both parties before this court, I am of the finding that the claimant had not, on the balance of probability, proved to the court that he was cold storaged or was in

a nothing to do position. Neither was he demoted. In fact, oral as well as documentary evidence are overwhelmingly against the contention of the claimant. As such, I am of the view that the company is not guilty of a breach which goes to the root of the service contract or it has evinced an intention no longer to be bound by it.

[7] Dissatisfied, the respondent moved the High Court for orders of certiorari and mandamus. The High Court held that the Industrial Court had committed an error of law in arriving at its conclusion and accordingly granted the orders prayed for. Against this decision, the appellant appealed to the Court of Appeal. In the Court of Appeal, counsel for the appellant contended that the High Court had exceeded its jurisdiction in usurping the functions of an appellate court. In rebuttal, counsel for the respondent argued that the High Court was right in granting certiorari because the Industrial Court had failed to conduct a proper analysis of the facts and as such it had arrived at an erroneous conclusion. He further submitted that no reasonable tribunal, similarly circumstanced, would have arrived at such a conclusion. In delivering the judgment of the Court of Appeal Gopal Sri Ram JCA said, inter alia:

> Now, having read the record and having considered the submissions of both counsels carefully, we agree with the submission advanced on behalf of the respondent. This is a case where it is clear that the Industrial Court took a narrow and pedantic approach to the facts before it. This is not a case of breach of contract at common law. This is a case which, according to the terms of the Industrial Relations Act 1967, has to be decided in accordance with good conscience and equity ...
>
> Having regard to the factual matrix, in particular, the treatment that the respondent received at the hands of the appellant's officers, there is little or no doubt in our mind that a reasonable tribunal properly directing itself on the facts and law would have reached a conclusion that the respondent had been dismissed without just cause or excuse. This is indeed the conclusion of the learned judge. We are fully in agreement with him. Having read his judgment, we are unable to discover any misdirection either in law or in his appreciation of the facts. We are therefore of the view that this appeal should be dismissed ...

[8] The Court of Appeal however varied the order of the High Court as follows:

(i) certiorari is to issue and quash the award of the Industrial Court;

(ii) there shall be a finding that the respondent was dismissed without just cause or excuse;

(iii) the order of mandamus is set aside;

(iv) the case shall be remitted to the Industrial Court to assess the quantum of compensation only;

(v) the remedy of reinstatement is refused.

[9] It is immediately clear, upon perusal of the judgments of the High Court and the Court of Appeal, that they had conducted a review of the correctness of the decision of the Industrial Court on the merits. Now, the Federal Court in *R Rama Chandran v The Industrial Court of Malaysia* [1997]

1 MLJ 145 has taken a bold step in the area of administrative jurisprudence. It has, to some extent, unshackled the Malaysian judiciary from the traditional constraints of judicial review which have plagued the courts in the United Kingdom and other Commonwealth countries. The Federal Court, in a majority decision, has held, inter alia, that in judicial review proceedings, the courts have the following powers:

(a) to review the decision of a tribunal on the merits;

(b) to substitute a different decision in place of the tribunal's decision without remitting in to the tribunal for re-adjudication; and

(c) to order consequential relief.

[10] Dato' Dr Cyrus Das has requested us to revisit *Rama Chandran*. He has presented us with some powerful arguments. It has been an able and thorough presentation. He argues that *Rama Chandran* could have been wrongly decided; that it has obliterated the traditional distinction between supervisory and appellate jurisdiction of the High Court. He further contends that it has all but rendered the ouster cl in s 33B of the Industrial Relations Act, a dead letter, those issues had been dealt with in *Rama Chandran*. In my view, the Federal Court in *Rama Chandran* had discussed exhaustively the supervisory powers of judicial review in Malaysia. The discussions were wide ranging. There were conflicting views. But the majority views prevailed. Still, it is, I think, important to register a cautionary note. Here, I would endorse the observation made by Mr. Choo Chin Thye in his article entitled *The Role of Article 8 of the Federal Constitution in the Judicial Review of Public Law in Malaysia* when he said:

> It should also be noted that the Federal Court in *Rama Chandran* emphasized very carefully that the power of the court to examine the merits or substance of a decision of a public decision maker is an exceptional circumstance that will arise only where the factual matrix of a case required it. Otherwise, the general rule that the court will not inquire into the merits before a public decision maker still holds.

[11] The majority pronouncements in *Rama Chandran* had been reaffirmed by the Supreme Court in *Kumpulan Perangsang Selangor Bhd v Zaid bin Haji Mohd Noh* [1997] 1 MLJ 789 and followed by the Court of Appeal in several cases, ie *Amanah Butler (M) Sdn Bhd v Yike Chee Wah* [1997] 1 MLJ 750; *Datuk Bandar Kuala Lumpur v Zain Azahari bin Zainal Abidin* [1997] 2 MLJ 17 and *Swedish Motor Assemblies Sdn Bhd v Haji Mohd Ison bin Baba* [1998] 2 MLJ 372. In the circumstances, I do not propose to discuss these issues again in this judgment. Suffice to say that the progressive views expressed in. *Rama Chandran* have been accepted and adopted by the Malaysian judiciary at the highest level. Although those views are expressed in the context of decisions from Industrial Courts, they are also applicable, in my view, to decisions of other statutory tribunals or bodies. Here, I am reminded by what Lord Browne-Wilkinson had said that judicial review had become one of the most socially important and legally fertile areas of the law and he went on to make the following observation in his *Foreword to Supperstone & Goudie, Judicial Review (Butterworths London, 1992)*:

> Its social importance is self-evident. Growth in executive interference in the lives of individuals, inevitable in a modern state, has exposed us all to the risk that executive power may be exercised in an unbridled or abusive manner. If, as some thought, the common law has proved so senile and impotent that it could not develop to meet this change in society, the rule of law would not have regulated administrative action. Governments are not notorious for introducing legislation which limits their own powers. Happily, the common law has proved to be fertile not impotent.

[12] Quite clearly, the views expressed by the majority in *Rama Chandran* are not the product of what some legal commentators described as 'judicial excessivism'. On the contrary, they reflect the kind of controlled judicial activism that is needed in order to meet, in a supervisory context, the ever-widening powers conferred upon statutory tribunals or other bodies which have proliferated, in modern times and affecting, quite conceivably, all facets of society. I say 'controlled' because I take the view that *Rama Chandran* powers should only be invoked in appropriate cases. Otherwise, there is the danger of inculcating what a learned writer has aptly described as a 'runaway development of judicial review'. (see Dr Venkatiyer: *The Importance of Judicial Review, Insaf,* Vol xxxi No 4, p 60. In drawing attention to the Indian experience, he says this:

> India stands out as a prime example of this unfortunate development. There, the courts, have assumed competence over an amazing array of public activity: they have given directions as to the width of a road giving access to a building. (*Upendra Baxi v State of Uttar Pradesh* [1986] 4 SCC 106); asked a State to pass legislation to prevent ragging of college students, (*State of Himachal Pradesh v A Parent of a Student of Medical College, Simla* [1985] 3 SCC); revoked the limit that had been put on the expenditure on drugs in a mental hospital, (*Rakesh Chand Narain v State of Bihar* [1986] Supp. 576); laid down guidelines for inter-country adoption of children, (*Laxmi Kant Panday v Union of India* AIR [1987] SC 232); prescribed the qualifications for drivers of buses belonging to or hired by educational institutions, (*MC Mehta v Union of India* [1998] IX AD (SC) 37); sad so on.

[13] According to him, the Indian practice has been the subject of criticism because the courts would have encroached upon the sphere allotted to the legislature by making populist declarations of rights — rights which Parliament, in its wisdom, chose not to legislate upon.

[14] Clearly therefore, not every case is amenable to the *Rama Chandran* approach. It depends on the factual matrix and/or the legal modalities of the case. This is certainly a matter of judicial discretion on the part of the reviewing judge. In the instant case, notwithstanding the very able submission by Dato' Dr Cyrus Das, I remain unconvinced that a case has been made out for revisiting *Rama Chandran* in terms of his propositions. That being the case, the answer to the question postulated for our consideration has to be in the affirmative.

[15] Be that as it is, it does not, however, automatically follow that this appeal has to be dismissed. There is still the question of whether the High Court had properly examined and appreciated the facts presented in the Industrial Court. Could it be said, as the Court of Appeal had held, that no reasonable tribunal, similarly circumstanced, would have arrived at the decision

which the Industrial Court had? At this point, I find the following observation expressed by Sudha CKG Pillay in her article *The Ruling in Rama Chandran — A Quantum Leap in Administrative Law* [1998] 3 MLJ lxii to be particularly apt. She said this:

> The new powers that have been entrusted to the courts are enormous and like any other powers are open to abuse. Thus, it is vital for the reviewing courts to display caution and circumspection in the exercise of these wider powers. To this end, the courts should not be quick to wield their new powers in each and every case that comes before it. It has to weigh a multitude of factors before coming to a decision to exercise such powers. In so far as the review of Industrial Court awards are concerned, the reviewing courts must balance not only the competing interest of both the employee and the employer but also the need to preserve the functions of the Industrial Court and to prevent the remedy of s 33A from fading into oblivion and becoming obsolete. If the ruling in *Rama Chandran* is taken to authorize the exercise of the wider powers of the courts in each and every case where the award of the Industrial Court is challenged, the spirit in which these new powers was conferred by the majority in *Rama Chandran* will have been misunderstood and, perhaps, inadvertently, pave the way for an unnecessary emasculation of the functions of the Industrial Court.

[16] The fear of unnecessarily emasculating the functions of the Industrial Court can be laid to rest if the reviewing courts, in the exercise of their powers, constantly bear in mind that the review of the Industrial Court's award on the merits is akin to, though not the same as, the exercise of appellate powers. The courts should also remind themselves that the Industrial Court operates under the Act, in accordance with principles quite different from those in the civil courts. For example, s 30(4) and (5) of the Act stipulates:

> (4) In making its award in respect of trade dispute, the court shall have regard to the public interest, the financial implications and the effect of the award on the economy of the country, and on the industry concerned, and also to the probable effect in related or similar industries;
>
> (5) The court shall act according to equity, good conscience and the substantial merits of the case without regard to the technicalities and legal form.

[17] In the instant case, on a careful perusal of the award given by the Industrial Court, I am unable to detect any substantial flaws in its reasoning or the conclusions therein. In my view, the award contains a sound analysis of the law as to what constitutes constructive dismissal by an employer in line with the propositions postulated by Lord Denning MR in *Western Excavating (ECC) Ltd v Sharp* [1978] 2 WLR 344 and by Tun Salleh Abbas LP in *Wong Chee Hong v Cathay Organisation (M) Sdn Bhd* [1988] 1 MLJ 92. The Industrial Court had conducted a detailed review of all facts and evidence, both oral and documentary, presented by the disputing parties. It had drawn inferences from the conduct of the respondent and the relevant officers of the appellant. It then came to the conclusion that the appellant was not guilty of any breach which went to the root of the service contract nor had it evinced an intention not to be bound by it. It further held that there was no breach which could justify the respondent's resignation. In coming to these conclusions, it also took into consideration the unhappy if not unfortunate professional relationship between the respondent and certain

principal officers of the appellant. This is reflected in that part of the award which states:

> However, I do not think that the claimants allegations of constructive dismissal is a convenient device for him to escape so as to venture out on his own. I believe claimant loved to remain in Petronas (the Company), but because of his belief that he was not given a position commensurate with his qualifications and experience and being unable to get along wonderfully with Dr Ramlee Karim and Professor Dr Olay Christie and that his application for transfer had not received a favourable response from the Human Resources Management Department had made him to act impulsively and walked out of his job. He was just impatient.

[18] Quite clearly, the Industrial Court had found the respondent to be impatient. A reviewing judge might not have come to the same conclusion from the established facts but he should exercise restraint. He should not disturb such finding unless it could be shown to be based on grounds of illegality or plainly irrational. In this case, the Court of Appeal had made the following observation:

> Having regard to the factual matrix, in particular, the treatment that the respondent received at the hands of the appellant's officers, there is little doubt that a reasonable tribunal, properly directing itself on the facts and the law would have reached a conclusion that the respondent had been dismissed without just cause or excuse. This is indeed the conclusion of the learned judge. We are fully in agreement with him.

[19] With respect, I am unable to agree with that observation. In my view, there is no illegality in the finding of the Industrial Court, nor can it be said to be plainly irrational in all the circumstances. On the contrary, a closer perusal of the award shows that there has been a proper appreciation of the facts and law by the Industrial Court. It has also taken into account the competing interests of the workman and his employer. I am therefore unable to accept the observation made by the High Court in these terms:

> From the facts of this case, I do not think that the applicant had acted impatiently. On this issue, I cannot agree with the view of the Industrial Court in stating that 'He was just impatient'. As stated in the award, the applicant returned to report to Petronas around September 1986 and only left Petronas in December 1988, a period of more than two years. How long can a person of his qualification and experience be asked to wait before given a proper job? From these facts it is more appropriate to conclude that after waiting more than two years, the applicant had been more than patient ...

[20] It is said that patience is a virtue. It is relative. A two year wait may be too long for the respondent. It may not be for others. It depends on the particular circumstances. In government service or in a very large organization such as Petronas, a holder of a PhD does not necessarily guarantee a promotion. There are numerous imponderables involved. A long wait for promotion is not an uncommon feature in government service or statutory bodies. It is common knowledge that bureaucratic niceties come into play in such organizations. In the premises, having regard to the established facts and for the reasons stated, I take the view that the conclusion or finding arrived at by the Industrial Court that the respondent had not been dismissed without just cause or excuse to be reasonable in all the circumstances. It had acted

in accordance with the relevant principles prescribed by law. There was no procedural impropriety involved in the decision-making process nor could it be said that its finding or conclusion was based on grounds of illegality or irrationality.

[21] That being the position, I would therefore allow the appeal with cost. The decisions of both the Court of Appeal and the High Court are hereby set aside. The award of the Industrial Court is reinstated. Orders accordingly.

Appellant's appeal allowed.

Reported by Lim Lee Na